

TESTIMONY OF GARY BROWN
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION



BEFORE THE
HOUSE SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
OVERSIGHT HEARING ON FOREIGN OPERATIONS AT U.S. PORT FACILITIES

MARCH 9, 2006

**COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES
OVERSIGHT HEARING ON
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ON BEHALF OF 60,000 MEMBERS OF
INTERNATIONAL LONGSHORE AND WAREHOUSE UNION (ILWU)**

Chairman LoBiondo, Ranking Member Filner and members of the Committee, my name is Gary Brown. I am a third generation longshoreman at the Port of Tacoma, Washington, where I have worked for 37 years. I am also privileged to serve as the security liaison for the International Longshore and Warehouse Union. In this capacity, I have received numerous security certifications from the U.S. Coast Guard and FEMA and have successfully completed anti-terrorism training for the private sector, sponsored by the U.S. Attorney's office in Washington State.

On February 14 – 16, 2006, I organized a port security training session for ILWU members in conjunction with the Pacific Maritime Institute. Longshore workers from each of our Locals were trained on facility, company, and vessel security. We appreciate the first responders, Coast Guard, and Customs officials who made themselves available for this important training. Dock workers are literally on the front lines of our country's security and as such, must be aware of how to prevent and react to security incidents. The Union was obligated to initiate and pay for this training ourselves because our employer has failed to conduct the proper security training courses that Coast Guard regulations require.

We are at a critical time in the history of our country. The threat of a terrorist attack against the marine transportation system is the new reality. On March 14, 2004, suicide bombers, hiding in a metal cargo container, entered the Israeli port of Ashdod to commit terrorism. They killed 10 people and wounded another 16. All the victims were port workers, like me and other ILWU members.

As the tragedy in the Port of Ashdod has made chillingly clear, port security equates to worker safety in its most fundamental sense. Our lives and those in our port communities are literally on the line. In the event of a terrorist incident in an American port, the dockworker is the first one who is going to be killed or injured. Most dockworkers live within close proximity of the port and certainly within the impact-radius of any incident or explosion, be it chemical, biological or radioactive. We are talking about our families here, our children and our homes. It is in our own best interest to make sure American ports are secure; our family's lives and our livelihoods are at stake. Our commitment to port security is real, and it is not watered-down or diluted by cost or commercial concern. This, Mr. Chairman, brings me to the immediate issue at hand.

I. SUMMARY OF COMMENTS

The controversy over federal approval to permit Dubai Ports World, which is owned by a foreign government, to operate marine terminals at six East Coast ports is of the utmost importance for our country. The ILWU fully supports bipartisan calls in Congress for the Bush administration to direct the Committee on Foreign Investment in the United States (CFIUS) to conduct a full 45-day investigation of the Dubai contract. Although our seaports are part of the global economy, the ILWU believes that we should not rush to open the doors of such national assets to companies owned and operated by foreign governments where serious concerns exist regarding terrorist activities and funding. We, therefore, urge that the decision for approval be based on the national security interests of the United States rather than the commercial interests of any one company or country.

But we also urge the federal government, including Congress, to focus its attention beyond the controversy over one future, commercial contract and to recognize and correct the immediate, major deficiencies of security that exist today in America's ports. It is the current lack of effective port security since the terrorist attacks of 9-11 that is the real concern of dockworkers and millions of Americans who live in close proximity to our nation's ports.

The Maritime Transportation Security Act (MTSA), initiated by this Committee and passed in 2002, provides the foundation for the nation's port and cargo security. In 2004, the Coast Guard -- designated as the lead enforcement agency under MTSA -- issued comprehensive, detailed and - we believe - effective port security regulations for marine terminal and vessel operators to follow. Unfortunately, the MTSA security regulations have been implemented and honored in the breach, with both foreign and domestic companies ignoring most of the required measures designed to improve port security. Just like the current case over the Dubai contract, the problem of system wide noncompliance with existing port security regulations arises from allowing commercial interests to override security interests.

MTSA regulations allow terminal operators to write their own facility security plans. This is a mistake and yet another example of commercial interests overriding security concerns. We allow terminal operators to create their own security rather than having one model and enforcement mechanism for all terminals at all ports.

The ongoing security crisis in our ports also stems from the lack of funding, training, and infrastructure. The overarching problem we now face is making the enforcement mechanism effective and capable of ensuring that essential port security measures mandated by Congress are fully implemented. However, the Coast Guard is a waterside and vessel enforcement specialist. They are not a "landside" or "terminal" enforcer of container terminal regulations and operations. What is going to be the USCG's defined enforcement role and how is it going to differ from the past? How is the USCG going to "force" terminal operators to conform? What is going to be the compliance trigger if and when terminal operators are found to be non-compliant? Most importantly, who is going to create the procedures and protocols to instruct the Coast Guard in the basics of terminal operations? Effective port security regulation compliance will require a comprehensive, fully funded, land-side compliance program employing large numbers of Coast Guard personnel who must be trained in terminal container operations and complex information systems format. This is a complex industry, and the volumes are astronomical.

In conclusion, the ILWU believes that the debate over Dubai will do little to protect America's seaports unless the federal government takes this opportunity to recognize and correct the glaring, major defects in port security that exist today.

In our written testimony, we have laid out specific security protocols at marine terminals that must be followed to ensure real port security. I look forward to answering questions about these recommendations.

Thank you.

ILWU RECOMMENDATIONS FOR MARINE TERMINAL SECURITY

Security mandates may impose significant and additional operating costs on the maritime industry. However, port facility operators have repeatedly refused requests to implement some of the following, all of which are mandated by the Coast Guard regulations, because of cost and/or commercial concern:

1. Access control procedures for the positive identification of people, vehicles and cargo before entering a port facility must be immediately implemented as required by regulation 33 CFR ' 105.255(a), (e)-(g), and 105.265 (a)-(d).

Presently, truck drivers are the largest single occupational group working within the terminals. **Access is granted with little authentication of identity and virtually no inspection** of their "sleeper cabs," which frequently house friends and family. Ironically, these drivers, once inside the terminals, have unlimited access to all areas of the terminals without oversight or supervision. Any of the fourteen terminals in the Ports of LA/Long Beach may have hundreds of drivers on each of the terminals at any one time.

2. Proper documentation, placarding and separation of all dangerous cargo and hazardous material must be performed as required by regulation 33 CFR ' 105.265(a)(9).

Presently, **hazardous cargo is frequently unmarked** and integrated with other cargo.

3. The integrity and correctness of all seals on containers must be checked as they enter a port facility and as they are placed in inventory on the docks to detect and deter any tampering, as required by regulation 33 CFR ' 105.265(b)(4) and 105.265(c)(4).

Presently, this is not being done at most port facilities. In fact, since September 11, many facility operators have discontinued past practice of checking these seals.

Many terminal operators have implemented remote camera technology at our gates that have replaced the physical and visual inspections of seals. However, the **resolution of the camera is too low to determine whether a seal has been tampered with** or even to read the number on the seal.

4. All port workers must be trained as to the basic requirements of the port facility security plan, the detection of security problems and, most importantly, the proper response and evacuation procedures during a security incident as required by regulation 33 CFR ' 105.215.

As of today, **port facility operators refuse to share with dockworkers any parts of their security plans** on grounds of "confidentiality"; dockworkers cannot protect themselves or our ports if they are excluded

from security initiatives. The ILWU would appreciate any grant money that can be made available to the union for training, in light of our employer's failure to cooperate.

5. Complete documentation of cargo must be confirmed before entering a facility as required by regulation 33 CFR ' 105.255(e)(1), (3).

Presently, cargo is received with missing or incomplete documentation; but the cargo is allowed to enter with a STC (Said To Contain) designation or with the ambiguous "Dummy" which often means there will be **NO LISTING OF CONTENTS AT ALL**. This container is allowed to be "entered" into the facility without ever knowing what is inside.

Most of the deficiencies in port security can be corrected through continuous and rigorous enforcement of and adequate funding for the Coast Guard regulations. In this regard, we applaud the introduction of Senate Bill 1052, the Transportation Security Improvement Act (TSIA), which would improve the examination of cargo shipments overseas before they reach U.S. shores, provide procedures for the speedy resumption of commerce in the event of a seaport attack, and expanded the use of inter-agency operations centers (IOCs).

However, there are at least two additional security measures, not specifically covered in the existing or proposed regulations that should be immediately implemented in order to protect our ports.

- **EMPTY CONTAINERS:** The inspection of all containers marked as "empty" upon entering a port facility is a no-brainer. On any given day, as much as forty percent of the containers delivered into West Coast ports consist of "empty" containers. Many facility operators presently receive and process "empty" containers without confirming that they are truly empty. Containers marked as empty provide a golden opportunity. The good news is that unlike containers filled with cargo, the inspection of empty containers is quick and easy. It is a relatively cheap and painless way of confirming the absence of a dangerous substance or device, and the absence of persons illegally attempting to gain access. This, of course, makes the inspection of "empty" containers all the more compelling and an absolute necessity in any port security program.

There have been assertions made by industry officials that all West Coast terminal operators are inspecting empty containers. This is simply not true. The ILWU has furnished the Coast Guard with formal letters from both stevedores and terminal operators informing the union that, at certain facilities, empty containers will no longer be inspected.

- **24 ADVANCE NOTICE OF EXPORT CARGO:** Requiring the proper documentation of export cargo 24 hours in advance of its receipt at the port facility is logical and follows the rule for import cargo. While U.S. Customs requires twenty-four-hour advance notice of the contents of all containers arriving aboard vessels, *see* 19 CFR ' 4.7(b), current federal regulations require no comparable notice for export containers arriving by truck or rail. Imposing a 24-hour detailed notice rule on inbound cargo, but not trucks or trains

delivering “outbound export cargo” into the terminals makes little sense.

Requiring such notice would provide facility personnel additional time to spot errors relating to the misidentification of cargo, fix the honest mistakes, and determine what containers require further inspection. It would also lead carriers to spot more unidentified HazMat materials before they are transported.

It is important to understand that while “empty” containers and export cargo are ultimately destined for other countries, they also pose immediate security risks for our seaports and the country. This is a national security issue for two reasons:

1. Once the cargo within the container has been unloaded at its eventual destination, there is no system, protocol, or requirement in place making the last shipper responsible for closing and sealing the doors. As a result, this empty container will travel over-the-roads of the U.S. unlocked and open. It may serve as a platform or vehicle for anything or anyone who may desire to do harm to our country. It may lie unattended on city streets or even within the port for days or even weeks until it is returned to the terminal for shipment (usually back to Asia.) Who knows what has been stored or smuggled inside? Who knows what kind of plan someone may come up with utilizing this empty container?
2. Once loaded onto a vessel, empty containers travel with that vessel between and among U.S. ports until they are eventually off-loaded, whether in a foreign port, or still here in the U.S. At any point along the vessel route, a weapon of mass destruction, planted inside an “empty” container or among export cargo, could be later detonated at the next American port-of-call. The Al-Quaeda terrorists executed their September 11 attacks from within the United States. The same strategy may well be used again and should be anticipated. Prevention with respect to cargo and containers in our marine transportation system depends on a thorough knowledge of containers and cargo handling methods and operations. The 9/11 terrorists exhibited an amazing ability to gather intelligence, and then plan, fund and execute a successful operation. The defense of our country demands no less.